THE LABOR PARTY AND THE CONSTITUTION IN AUSTRALIA

Just at present public affairs in Australia illustrate the potent influence of social doctrines upon political theory. It is about twenty years since organized labor entered politics in the colonies as a distinct party, and half that period since the federation of Australia made possible the development of a national labor policy. Although state and federal labor ministries, supported by a coalition with one of the older parties, have previously held office, only within the past year has the labor party had an absolute majority in Parliament, forcing its former antagonists and allies to fuse as a minority opposition and securing independent control of the commonwealth government.

Since the important labor laws of Australia were enacted either by one of the older parties or by the labor party in coalition with an older party, they do not represent unconditionally the ideals of labor policy, but rather compromises dictated by political expediency. This is even more markedly true of the provisions relating to social and industrial legislation in the federal constitution; for the constitution was drafted by a series of conventions in which the workers as a class were not directly represented.

The federal labor ministers now find themselves confronted with the task of revising these compromise statutes to suit their more progressive or radical constituency. In this undertaking they encounter a constitution not designed in their favor and defended by a relatively conservative judiciary. On the other hand this constitution is only a decade old and has not the prestige of an ancestral tradition. Its amendment can be discussed on a rational rather than a sentimental basis, and is a vital part of the labor program.

The labor laws of Australia may be divided into three groups. First there are factory and mine acts that do not differ greatly in scope and detail from those in force in other countries. Next

are the workers' compensation and old-age pension laws, which at the time of their enactment in Australia had already been tried in England and Europe. Finally there is a group of laws at the time of their passage in New Zealand and Australia entirely new to modern legislation, which provides for state regulation of wages and other conditions of employment, and incidentally for government supervision of industry.

Only laws of the last class encounter in Australia constitutional difficulties. The organic law of the commonwealth is, as compared with our own, extremely liberal, expressly authorizing old-age pensions and federal intervention in interstate disputes between employers and employees. But the full exercise of the latter power is checked by certain general and special limitations which the constitution has either adopted from other countries or employed in defining the respective spheres of federal and state authority within the commonwealth.

Two methods of regulating wages, and incidentally industry, quite different in form but identical in outcome, arose in New Zealand and Australia between 1890 and 1900. New Zealand, followed by New South Wales, Western Australia, and finally by the federal government, established arbitration courts, which, by judicial procedure and acting upon evidence, fix wages and other conditions of employment. Disputes can be brought before the court only by unions of employers or employees, which are incorporated for this purpose. The orders of the court have the force of law; so that to pay a wage lower than that prescribed by the court, or to impose worse conditions upon an employee renders an employer liable to fines and other penalties, as well as damages, while to engage in a strike or a lockout is a crime.

The most prominent object of the compulsory arbitration laws was to prevent strikes, in which they have partly, but by no means entirely, succeeded. Meanwhile Victoria was trying to stop sweating, by modifications of its factory act providing for boards in different industries with power to regulate wages and do most of the other things, except prohibit strikes and lockouts and grant preference of employment to unionists, that

are done by an arbitration court. But the wages boards are negotiating rather than judicial bodies, and are composed of equal numbers of employers and employees actually engaged in the industry affected, under an impartial chairman. Except that their decisions have the force of law and may be put into effect by an action in an ordinary court, these boards do not differ essentially in organization and functions from the voluntary boards often established to negotiate wage scales in highly unionized trades in the United States. The labor party has preferred arbitration courts to wages boards, in general principle, because the former can grant the closed shop and can in some other respects more radically regulate industries. The right to order the closed shop granted to most of the courts rests on two principles—that a court with authority to prohibit strikes must have power to take into consideration all issues that may occasion a strike; and that inasmuch as unions are required to put the compulsory arbitration law in motion, a court established under that law is justified in fostering the organizations upon which depends its own existence.

The wages boards, however, soon developed two marked superiorities to the arbitration courts. Being composed of men practically familiar with the technical processes and the actual conditions of employment in the industry under consideration, they did not, like the courts, have to depend on evidence for these facts, and consequently did not fall into the grave errors that—through faulty information or misunderstanding of testimony—not infrequently characterize a court's decisions and occasion numerous applications for the amendment of awards. And as there is a board for each industry or trade regulated, in case of urgency an early decision of points at issue can be secured, while the congestion of business before a single court, trying to regulate all the industries of a state or commonwealth, sometimes causes delays of over a year in the hearing of important cases. Strikes in defiance of the law have resulted from the impossibility of getting immediate action by a court during a labor crisis.

The present tendency in Australia is to combine the advan-

tages of both forms of regulation by providing wages boards as tribunals of first resort, allowing cases to go to the court only where, on account of legal points involved or irreconcilable difference of opinion within the board itself, a decision cannot be obtained without appeal. New South Wales has substituted for its original law, providing only for an arbitration court, a law combining the boards and court; Victoria has added a "court of industrial appeals" to its wages-board system; and Queensland and South Australia have recently adopted laws with provisions similar to those of their two sister states. New Zealand and Western Australia and the federal government retain the arbitration court in more nearly its original form. Tasmania is the only state without legislation upon this subject.

Some understanding of what such a state authority as is instituted by these acts does, is necessary in order to follow the constitutional aspects and implications of this legislation. The court fixes a minimum wage and, as a corollary to this, a maximum working day. As directly affecting wage rates it specifies conditions of apprenticeship, defines who are to be considered journeymen and who helpers, and classifies occupations by particular operations. It regulates piece-work as well as time rates, and may impose either system of payment exclusively upon a factory. In granting preference to unionists the court may define the method of employing workers, and may prevent their discharge under certain conditions. The court in special instances prescribes the speed of machines and defines what should be the normal daily turnout of an operative.

In fixing the wages the court may examine the books of employers and be governed in its orders by the profits shown by an industry. But cost and standard of living are also important factors in determining the equity of a wage scale, and in Australia the courts attach more importance to them than to the rate of profit. Courts sometimes order employers to pay higher wages, even though they may already be losing money, or may stand liable to lose money under the new rate. In the Broken Hill mining dispute the judge ruled: "If a man can-

not maintain his enterprise without cutting down wages which are proper to be paid his employees—at all events, the wages which are essential for their living—it would be better that he should abandon his enterprise." The arbitration judge in South Australia has decided: "If any particular industry cannot keep going and pay its employees at least 7 shillings a day of eight hours, it must shut up." In case of an application by coal operators in Western Australia to have the minimum wage previously fixed by the court lowered, on the ground that when paying that wage the industry was not profitable, the court unanimously ruled: "If the industry cannot pay that price, it had better stop, and let some other industry absorb the workers."

Clearly, therefore, state regulation of wages, as enforced in Australia, means state distribution of the net product of industry and the regulation of profits, and may directly determine whether a particular industry shall survive or disappear. The community consciously tries to do what in other countries is left to the unconscious operation of economic forces. The next step is to attempt to regulate the conditions antecedent to wages.

All industries are not identically affected by government control of wages because the influence of the government upon these antecedent conditions varies. In the building trades, baking, housework, and other industries and occupations serving exclusively local wants, an increased wage is passed on in the form of higher prices to consumers. Profits and the benefit of the higher wage to the worker remain unregulated, and consequently in labor ranks there is some demand also for boards to determine prices. A second class of Australian industries, like mining, farming, and grazing, cannot pass on increased wages in the form of higher prices to consumers, because they produce chiefly for export markets where prices are determined by worldwide competition. Meanwhile factory industries, like the manufacture of boots, shoes, clothing, furniture, and machinery, can by sufficient tariff protection, so long as their production does not exceed the demands of the domestic market, pass on

a higher wage to consumers by raising prices. This fact establishes a direct relation between the tariff and compulsory arbitration. And as Australian manufacturers seldom export any of their wares, but are still struggling to win their domestic market from British, German, and American competitors, this relation applies to practically all the factory industries of the commonwealth.

Within the boundaries of the federation, however, competition is free—as it is within the United States—and this tariff area includes districts having very different conditions of production and different rates of wages. Stimulated by the desire to foster the manufactures of their own state, the different state courts and boards bend to considerations of interstate and interurban competition in setting a minimum wage for the trades under their jurisdiction. This interferes with the desire of the labor people to equalize and standardize wages throughout Australia on an ideal basis, related solely to the cost of living and physical conditions of employment, and not in any way to local rivalries.

By way of comment, the moral background of labor policy with regard to competition within the commonwealth and competition between the commonwealth and other countries is absolutely contradictory.

As the tariff is regulated by the federal government; as the control of immigration, with the end of placing as heavy burdens upon the entry of competing labor as are placed by the customs duties upon competing merchandise, is vested in the same authority; and as a national wage system can be created only by the same central power, the highly regulative and socialistic program of the labor party looks logically toward developing federal at the expense of state authority, and results in a policy directly affecting the form and interpretation of the constitution.

The tariff policy of the progressive and labor parties in Australia has been dubbed the "New Protection." This policy, reversing that of the United States, gives first importance to wage protection, treating the protection of industries as only

incidental to this primary object. The machinery used to accomplish this end is a combination of the customs duty with an internal revenue tax.

Analogous legislation was used to foster the use of white labor on the Queensland sugar plantations. For many years before the federation of the commonwealth cane was raised in that state and parts of New South Wales with imported black labor. The federal government, soon after its formation, swayed by the sentiment of white labor in the other states, prohibited the importation of blacks and required the gradual return of those who had been brought to Australia to their own homes. This colored labor has now been entirely withdrawn from the commonwealth.

To compensate for the added cost of producing sugar thus caused, the federal government adopted three measures: (1) a duty of $29.20 a ton was levied on imported sugar; (2) an internal revenue tax of $19.47 a ton was levied on all sugar produced in Australia; (3) a bounty of $14.60 a ton was paid upon all sugar made from cane raised and harvested by white labor alone.

At present the Queensland planters have a net protection, adding bounty and tariff and deducting internal revenue tax, of $24.33 a ton, which is nearly $10 a ton less than the protection given by the United States tariff to the planters of Puerto Rico, Louisiana, and Hawaii.

This Queensland policy has been remarkably successful, white labor and small farming having within a decade been substituted for colored labor and small plantations, while at the same time the production of sugar has more than doubled. Not unnaturally it must have occurred to Australian legislators, concerned as they already were with the relation of the tariff to their minimum wage policy, that a plan that in Queensland has affected so remarkably both the race of the workers employed and the wages paid them might be applied to control the rate of wages paid in all protected industries.

Whether or not the suggestion came from this source, the "New Protection" policy was officially launched by a protec-

tionist ministry supported by the labor party in coalition, when the revision of the federal tariff, undertaken in 1907, was under way. To summarize from a memorandum accompanying the cabinet bill—

> The "Old" protection contented itself with making good wages possible. The "New" protection seeks to make them actual. . . . . Having put the manufacturer in a position to pay good wages, it goes on to assure the public that he does pay them. . . . . Excise duties will be imposed on certain classes of goods, which enjoy the benefit of sufficient protection, and an exemption from the duties so imposed will then be made in favor of those in the manufacture of which fair and reasonable wages are paid.

To determine what manufactures were to be exempt from the internal tax, an "Excise Tariff Court" was formed, with all the powers needed to ascertain reliably what wages and other conditions of employment prevailed in any industry or industrial establishment.

The plan for collecting the internal tax was to require a revenue stamp, equal in value to one-half the import duty, upon every article of Australian manufacture not exempted. Upon the manufactures of exempted employers was to be placed a stamp authorized by the commonwealth two years before, called the "Commonwealth Trade-Mark," which originally had much the same purpose as our consumers' league labels.

This law went into operation with the revised tariff, but was later declared unconstitutional by the High Court of the commonwealth, on the ground principally that it usurped the right of the states to regulate labor conditions within their own borders. Immediately the ministry gave notice of a proposed amendment to the constitution, empowering the federal parliament to make laws with respect to "the employment and remuneration of labor in any industry which, in the opinion of the Interstate Commission, is protected by duties of customs.

The memorandum accompanying this proposal states: "As the power to protect the manufacturer is national, it follows that unless the Parliament of the commonwealth also acquires power to secure fair and reasonable conditions of employment to wage-earners, the policy of protection must remain incomplete."

Action upon this proposed amendment and others accompanying it was deferred during the troublous life of the old ministries, but has become a live issue with the new labor cabinet. Within labor ranks there has been dissension regarding the centralizing policy thus declared, mostly from state labor ministers jealous of personal prerogatives; but the last annual labor conference—which is the great yearly gathering of workingmen's representatives from all parts of the commonwealth and dictates the policy of the labor party—indorsed this and the accompanying federal amendments and incorporated them in the official platform.

The scope of these amendments is wider than a first glance might suggest, because they authorize direct interference on the part of the central government with wage rates paid upon railways and by other public utilities owned by the separate states. The "Excise Tariff Court," which was declared unconstitutional, was given authority directly to lower or remove customs duties upon any articles which upon investigation were found to be controlled by a monopoly—either mercantile or manufacturing—so as to be unduly raised in price to consumers. The new amendments are expected specifically to empower the Interstate Commission to regulate monopolies in some analogous way; and it is proposed to give the commonwealth power to acquire and carry on any business which Parliament declares to be a monopoly.

Powers similar in principle have long been exercised by the government of New Zealand, which has established a government land mortgage, and an insurance department, and a state coal mine, in order to create competition in monopolized enterprises; so it is not strange that this method of control finds acceptance in Australia. The main question from a labor party point of view would be whether to intrust this power to the central or to the state governments. And obviously the logic of facts—the national extent of great industries, the tendency of monopolies to cover districts coextensive with tariff areas—points to the propriety, if such powers are to be exercised at

all, of placing this jurisdiction in the hands of the federal authority.

In sum these amendments would both extend federal powers at the expense of state rights, and extend the functions of government at the expense of private enterprise. Already the commonwealth can intervene, through the federal arbitration court, to settle labor disputes interstate in character; but interstate disputes have proved difficult to define and intervention is only possible when and to the extent that employment conditions are likely to cause a strike. The proposed interstate commission would regulate wages in all industries receiving tariff protection, without regard to labor disputes, adjusting these wages to the cost of living and other determining conditions in different districts. It is not suggested that a uniform scale could be adopted for the whole commonwealth.

Evidently the changes sought are similar in tendency, though much more radical, to those which it is hoped to attain through a tariff commission in the United States. They seek to emphasize social as distinguished from economic motives for protection, if we may use these terms to designate respectively the influence of a tariff, on the one hand, upon the people at large and, on the other, upon industrial capital and its managers and possessors. A tariff commission would use its advisory influence to secure an adjustment of customs duties to the labor cost of production in the United States as compared with that in competing countries; the Interstate Commission would authoritatively regulate the customs duties upon Australian manufactures so as to secure the payment of an ideal rate of wages to the workers producing them—paying little regard to what rates might be paid in other countries. In our country a tariff commission would doubtless in its recommendations take into account the extent to which certain industries were monopolized, and advise a scale of duties designed to prevent this—or at least to prevent a monopoly from overcharging American consumers. In Australia, the Interstate Commission would presumably have authority to act directly in such a contingency, after the investi-

gation, by making an administrative reduction of duties upon the products of the monopoly. With the commission possessing this power, it is unlikely that any industry depending on the tariff for its prosperity would invite interference by forming an oppressive combination. As a last recourse, and one that has no analogy whatever in American proposals, the Australian commission might recommend to Parliament, who must authorize the expenditures required, that government competition be established to check a monopoly. Whether or not this would be effective would of course depend upon the economy with which a government enterprise could be conducted. Many government undertakings, in attempting to undersell even a rather extortionate monopoly, might run into deficits that in the long run would cost the taxpayers more than the monopoly itself.

Possibly an out-and-out labor-protection tariff policy, such as is proposed in Australia, rests on so much securer support than a tariff system designed mainly to protect capital, that its added popular favor will make it desirable even from the capitalist point of view. Assuming, as the commonwealth government does, that a living wage must be paid whether an industry survives or not, and assuming also that a living wage for Australian workers must be considerably higher than in most competing countries, the responsibility of the government for the profitable continuance of an industry is greater than in countries where the public authorities do not fix the minimum compensation of workers. This responsibility is not alone to the investors in the industry, but also to the employees whose welfare is consulted not only by providing them a living wage but also by continuing their usual source of employment.

The rise to power of the labor party, and the platform it proposes to make into law, are sufficient indication that the people of Australia have so far retained confidence in government regulation as a palliative for social ills, and intend to continue this method of treatment. The arbitration system has encountered some humiliating defeats. After several bitter strikes, culminating in the recent protracted and violent labor

wars in the Broken Hill mining district and in the New South Wales coal fields, no candid observer can maintain for a moment that court orders and the possibility of appeal to a court to adjust labor differences at present either prevent all serious strikes or stop them after they have begun. Yet the Australian people do sense some benefit from this legislation, as it is hardly conceivable otherwise that it would be continued and extended, as it has been lately, by popular agitation. The puzzling thing about the present public policies of Australia and New Zealand is that they have in the course of the past twenty years encountered so little reaction. Positive and radical programs, when actually carried out, usually meet a cumulative opposition that soon becomes strong enough to bring them to a standstill, and often causes some withdrawal from their point of farthest advance. So far we have no evidence of such a gathering resistance in Australia—though it possibly may appear when the proposed amendments to the federal constitution are put to popular vote.

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